

UNITED STATES OF AMERICA)

v.)

Manning, Bradley E.)
PFC, U.S. Army,)
HHC, U.S. Army Garrison,)
Joint Base Myer-Henderson Hall)
Fort Myer, Virginia 22211)

Prosecution Notice

Potential Rebuttal Case

15 July 2013

RELIEF SOUGHT

The prosecution in the above case respectfully requests the Court permit the United States to elicit the below-listed information to rebut the evidence raised in the defense case in chief. *See* RCM 913(c).

STANDARD

"It is well settled that the function of rebuttal evidence is to explain, repel, counteract or disprove the evidence introduced by the opposing party." *United States v. Banks*, 36 M.J. 150, 166 (C.M.A. 1992) (quoting *United States v. Shaw*, 26 C.M.R. 47, 51 (C.M.A. 1958) (Ferguson, J., dissenting)). "The scope of rebuttal is defined by evidence introduced by the other party." *Id.* (citations omitted).

FACTS

The prosecution rested on 2 July 2013. The defense rested on 10 July 2013.

WITNESSES/EVIDENCE

(b) (7)(C)

Mr. Allen (Jason) Milliman
SA David Shaver
Ms. Jihrleah Showman
Additional Forensic Investigator/Witness

POTENTIAL REBUTTAL

The United States will re-call Ms. Showman to rebut the motive evidence the defense elicited from Ms. Lauren McNamara (formerly known as Mr. Zachary Antolak) in the February 2009 to August 2009 (pre-deployment) timeframe.

The United States will call (b) (7)(C) to rebut the motive evidence the defense elicited from SGT Sadtler in the March 2010 (deployment) timeframe.

The United States will re-call SA Shaver to discuss a specific SIGACT, dated March 2010 to expound upon and counteract the testimony of SGT Sadtler that he thought the incident that the accused approached him with documentation about, involving Iraqi Nationals being arrested, may have taken place in December 2009.

The United States will re-call SA Shaver to discuss emails the accused sent to members of the media, as well as Wikileaks tweets that were found on the accused's personal Macintosh computer, to rebut the evidence offered by the defense that Wikileaks operated as a journalistic organization, and was considered a legitimate journalistic organization elicited through Professor Yochai Benkler.

The United States will re-call SA Shaver to discuss how Wget was run from the accused's profile on his SIPRNET computer to counteract the testimony of CW2 Ehresman that executable files could be run off of a disk.

The United States will re-call an additional forensic investigator/witness to discuss how the Wikileaks.org website appeared in 2009 and 2010 to expound upon and counteract the evidence offered by the defense that Wikileaks operated as a journalistic organization elicited through Professor Yochai Benkler.

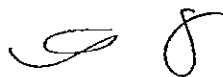
The United States will re-call Mr. Milliman to explain what was and was not authorized on the DCGS-A machines. Specifically, he will testify that he would not have told CW2 Ehresman that he could run otherwise unauthorized programs and executable files from a CD.

The United States will request the Court take judicial notice of the entire book, *Good Soldiers*, by David Finkel to explain what the accused would have read in the book beyond the select portions of which the Court took judicial notice and admitted upon defense request.

Depending on the defense disclosures pursuant to RCM 914, the United States may re-call additional defense witnesses or others in rebuttal.

CONCLUSION

Since the above-listed evidence goes directly to explain or contradict evidence raised by the defense in their case in chief, the prosecution should be permitted to raise the evidence in rebuttal.



ANGEL M. OVERGAARD
CPT, JA
Assistant Trial Counsel

I certify that I served or caused to be served a true copy of the above on the Defense Counsel,
via electronic mail, on 15 July 2013.



ANGEL M. OVERGAARD
CPT, JA
Assistant Trial Counsel